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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,961	03/04/2002	John Stewart Young	4002-2665/PC614.00	3768

7590 06/24/2004  
Woodard, Emhardt, Naughton, Moriarty and McNett  
Bank One Center/Tower  
111 Monument Circle, Suite 3700  
Indianapolis, IN 46204-5137

EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

3

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

003

# Office Action Summary

Application No.	Applicant(s)	
10/092,961	YOUNG, JOHN STEWART	
Examiner	Art Unit	
Anu Ramana	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-23, 27-34 and 38-42 is/are rejected.
- 7) ☒ Claim(s) 11-13, 24-26 and 35-37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2: 3/4/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 27, 29, 30-32 and 38 rejected under 35 U.S.C. 102(b) as being anticipated by Dietz (US 6,126,660).

Dietz discloses a device 10 for applying force to a spinal column segment including: a body 15 with a first end member 16, the body having a passage and a gear bore or “chamber” 25 in communication with the passage; a rack 30 moveably received in the passage, the rack having a second member 36 opposite first end member 16; a driving mechanism or gear 26 in engagement with rack 30 to move the first and second members; and a lock member 58 positioned in the chamber 25 with a lock pin 55 engaged thereto to move the lock member between a first position when the lock member is engaged with the rack and a second position when the lock member is not engaged with the rack (Figs. 2, 3, 14 and 15, col. 5, lines 6-67 and col. 6, lines 1-59).

Regarding claim 30, Kim discloses a spring 49 between the body and the lock pin to bias 58 to the first position (Fig. 14 and col. 6, lines 46-59).

Claims 1-10, 14-23, 27-34 and 39-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Kim (US 6,648,891).

Kim discloses a distractor device 30 for applying a force to a spinal column segment including: a pair of opposite engagement ends (102,102) coupled to distractor pins 26 engaged to

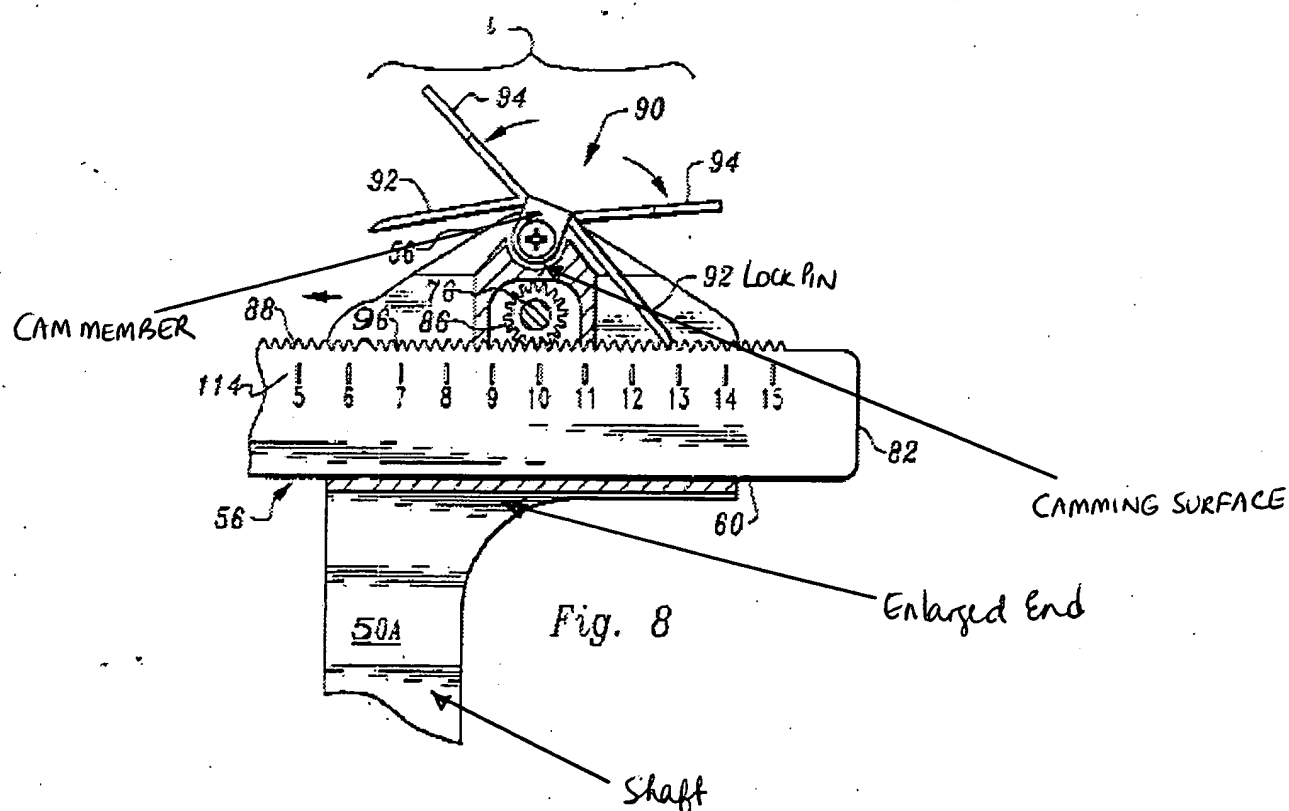
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vertebrae; a handle or "mechanism" (58) disposed between the opposite ends moveable to vary the distance between the ends; a moving means (74, 86); and a means for locking (90) having a first position (when engaging member or "lock pin" 92 is biased against teeth 88 by a spring and a second position (when lock pin 92 is not engaged with teeth 88) such that gear 86 can be moved in the extend and retract direction (Figs. 4, 6, 8 and 14, col. 6, lines 25-67 and col. 7, lines 1-10).

Regarding claims 3 and 4, Kim discloses a body 56 integral with one of the opposite ends 102, the body having a chamber or "passage" 64, a bore 74 intersecting the passage for receiving the gear or pinion 86 and a rack 60 with a plurality of teeth 88.

Regarding claim 7, Kim discloses lock member 90 movably mounted in chamber 56 and lock pins 92 engaged with lock member 90 and extending therefrom (Fig. 6).

See marked up Figure 8 from Kim below for the features of claims 8, 9, 14, 17, 21, 22, 33 and 34.



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*Allowable Subject Matter*

Claims 11-13, 24-26 and 35-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anu Ramana*  
June 16, 2004

*Kevin Shaver*  
KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700